



**Noosa Waters Residents Association Inc.**

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11 October 2012

State Development, Infrastructure and Industry Committee  
Parliament House,  
Brisbane QLD 4000

Dear Sir/Madam,

**Sustainable Planning and Other Legislation Amendment Bill 2012**

We are a community based not for profit Association for the Noosa Waters Estate.

The proposed Bill will **effectively** prevent genuine community organisations and individuals from continuing to contribute to the Planning and Environment Appeal process. Developers and Councils will not have to take into account genuine community organisations and individuals concerns as the community organisations and individuals will not be able to participate in the appeal process. This is because they fear crippling costs could be awarded against them if they lose.

**Recent experience with Planning and Environment Court**

We have had a recent experience with an appeal in the Planning and Environment Court which clearly illustrates some of the problems with the proposed Bill in relation to removing the current rule that genuine parties bear their own costs.

Our experience also showed that the proposed Alternative Dispute Resolution process will be unlikely to solve the problems in all cases, particularly like the appeal below.

A developer sought approval for a retail centre on land zoned for residential attached housing. The Sunshine Coast Council rejected the application as it was not in accordance with the Planning Scheme. The developer lodged an appeal against the Council's decision. A number of affected individuals and the Association became Co-Respondents and submitted detailed reasons why the land should not be re-zoned for retail purposes.

In this case mediation could not succeed because of the diametrically opposed views – Council, the Association and individuals wanted to retain the property as a residential area whilst the developer wanted to put in place a retail centre. The developer eventually withdrew its appeal. The land has now been sold to another developer who is putting in place a development consistent with the Planning Scheme.

In deciding to become a Co-Respondent we carefully considered the risk that costs may be awarded against us, particularly if we were considered to be frivolous or vexatious. We were very concerned all through the proceedings about the likely costs in view of our very limited resources. Consequently we handled the paperwork and submissions ourselves. We could not afford experts although we recognised this would have greatly strengthened our case. Clearly we were at a significant disadvantage to a well-resourced developer.

If there had been any risk that costs could have been awarded against us we certainly would not have become a Co-Respondent. Simply, we would not have had any opportunity to put to the Court our real and legitimate concerns about the effect of the proposed development on our community and individuals.

### **Arguments for change in the Explanatory Notes**

The arguments, in the *Explanatory Notes* accompanying the Bill, for changing the current situation where basically each party bears their own costs, are:

- “• *applicants being reticent to challenge conditions placed on development because the cost of litigating outweighs the benefit of a successful outcome*
- *commercial competitors fighting in court for the purposes of delay – knowing that even if the case is unsuccessful they will not be penalised in costs yet will have achieved their desired outcome*
- *developments approved by the council being litigated by third parties on weak town planning grounds – even though these grounds might not fall into the category of ‘frivolous or vexatious’.*

We do not have any issues with the Bill seeking to avoid the problems illustrated in the above arguments.

However, the Bill as proposed will, in practice, mean that legitimate concerns by community organisations and individuals will not be able to be brought to the Court’s notice as they will not join an action if there is a risk of having to pay all costs.

If the Court believes a party is acting in a frivolous or vexatious manner or just trying to delay the project then the Court already has the power to award costs against that party. In trying to prevent perceived concerns the Bill will effectively prevent community organisations and individuals from participating in the appeal process. They will be denied justice in relation to planning and environment matters which could materially affect them and their communities.

The Bill completely favours the well-resourced developer at the expense of community organisations and individuals.

There is no need to change the cost rules to align with other jurisdictions as the Planning and Environment Court hears matters that can impact whole communities whereas other Courts only hear matters impacting the parties involved.

### **Recommendations**

If this Bill is passed then genuine community organisations and individuals will lose their current rights and will be denied justice. Councils will not have sufficient funds to fight every Appeal.

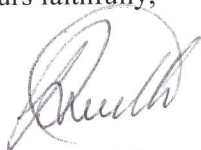
The Bill should be changed to ensure that community organisations and individuals are not disadvantaged where the arguments/circumstances outlined in the Explanatory Notes do not apply. The current rules where each genuine party bears their own costs should be retained.

These recommendations are consistent with the proposal for minor matters where the case is heard and determined by the Alternative Dispute Resolution Registrar on the basis each party bears their own costs.

In fact, it is very important to ensure that in major matters all **genuine** parties are able to put their cases to the Court on a bear your own costs basis and are not prevented from participating due to the risk of bearing the other parties costs.

We believe that our recommendations will not only meet the objectives outlined in the Explanatory Note but will also enable the community organisations and individuals who have genuine concerns to continue to participate in the appeal process .

Yours faithfully,

A handwritten signature in cursive script, appearing to read 'Gary Trevithick', enclosed within a faint circular stamp or seal.

Gary Trevithick  
President